

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

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**Central Illinois Generation, Inc.**

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**Docket No. ER02-1688-000**

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**MOTION FOR LEAVE TO FILE, INSTANTER  
THE COMMENTS OF THE  
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.211, the Illinois Commerce Commission ("ICC") seeks leave to file, instanter, its comments regarding the Application of Central Illinois Generating, Inc. ("CIGI") in the above-captioned proceeding. In support of this motion, the ICC states as follows:

1. On May 1, 2002 CIGI tendered for filing with the Federal Energy Regulatory Commission ("Commission") an Application for Market-Based Rate Authority, Waivers and Acceptance of Power Supply and Interconnection Agreements ("Filing") pursuant to Section 205 of the Federal Power Act and the Commission's regulations under 18 C.F.R. Part 35.

2. The Commission officially noticed CIGI's filing on May 8, 2002, setting a deadline for the submission of comments at May 22, 2002.

3, Despite exercising due diligence, the ICC was unable to analyze CIGI's filing, draft appropriate comments and adopt those comments in an open meeting of the ICC as required by Illinois Law.

4. As explained in the attached "Comments of the Illinois Commerce Commission", the ICC has a direct, material interest in helping shape the policy debate on these important issues, and no other party to this proceeding can adequately represent the ICC's interest.

Accordingly, the ICC believes that the public interest will be served by the Commission granting this motion for filing *instanter* in the above-captioned proceeding.

### **CONCLUSION**

WHEREFORE, for the foregoing reasons, the Illinois Commerce Commission respectfully requests that it be given leave to file, *instanter*, its comments in this proceeding.

May 29, 2002

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION

/s/

John P. Kelliher  
Special Assistant Attorney General  
Illinois Commerce Commission  
160 N. LaSalle, Suite C-800  
Chicago, Illinois 60601

Voice: 312/793-2877

Fax: 312/793-1556

e-mail: [jkellihe@icc.state.il.us](mailto:jkellihe@icc.state.il.us)

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**COMMENTS OF THE  
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. 385.211, the Illinois Commerce Commission (“ICC”) hereby submits its comments in the above-captioned proceeding in response to a filing submitted by Central Illinois Generation, Inc. (“CIGI”).

**I. BACKGROUND**

On May 1, 2002 CIGI tendered for filing with the Federal Energy Regulatory Commission (“Commission”) an Application for Market-Based Rate Authority, Waivers and Acceptance of Power Supply and Interconnection Agreements (“Filing”) pursuant to Section 205 of the Federal Power Act and the Commission’s regulations under 18 C.F.R. Part 35.

CIGI is an Illinois corporation and a wholly-owned subsidiary of Central Illinois Light Company (“CILCO”), which in turn is a wholly-owned subsidiary of CILCORP, Inc., an exempt public utility holding company. CIGI was created to facilitate the separation of most of CILCO’s Illinois-regulated utility operations from its electric generation function under CILCO’s restructuring plan.<sup>1</sup> CIGI states that after it assumes substantially all of CILCO’s

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<sup>1</sup> Filing, at 2

generation operations, its business will be the generation and sale of electricity.<sup>2</sup> The transfer of CILCO's generation assets and associated limited and discrete jurisdictional transmission facilities are the subject of a separate Section 203 filing that was filed by CILCO on April 29, 2002 in Docket No. EC02-66-000.<sup>3</sup>

CIGI's filing requests that the Commission: 1) authorize CIGI to make sales of energy, capacity, and ancillary services at market-based rates, effective June 1, 2002; 2) grant such waivers and authorizations as have been granted by the Commission to other entities receiving market-based rate authority; and 3) accept for filing both an interconnection agreement with CILCO and a Power Supply Agreement under which CIGI will provide electric energy to its affiliate CILCO.<sup>4</sup>

The Commission officially noticed CIGI's filing on May 8, 2002 wherein the deadline for comments was set at May 22, 2002.

As a preliminary matter, the ICC is charged with regulating public utilities in the State of Illinois.<sup>5</sup> As part of its regulatory duties, the ICC is required to ensure that public utilities' rates, charges, and rules and regulations relating to rates and charges for retail service within Illinois are just, reasonable and non-discriminatory.<sup>6</sup> The Illinois General Assembly has found that the development of competition in the retail electric market may create opportunities for new products and services for customers and lower costs for users of electricity.<sup>7</sup> Accordingly, the Illinois General Assembly has also directed the ICC to "act to promote the development of an

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<sup>2</sup> *Ibid.*

<sup>3</sup> *Id.*

<sup>4</sup> Filing, at 1

<sup>5</sup> 220 ILCS §5/1-101, *et seq.* (2000 & Supp. 2001).

<sup>6</sup> *Id.*, at §§5/9-101 - 5/9-252.

<sup>7</sup> 220 ILCS 5/16-101A(b)

effectively competitive electricity market that operates efficiently and is equitable to all consumers.”<sup>8</sup>

In order for the ICC to achieve this objective, it is imperative that genuine competition exist in the wholesale market. The Illinois General Assembly recognized the relationship between the retail and wholesale markets and required the ICC to advocate the development of competition in the wholesale, as well as the retail, market. This statutory directive is based on the Illinois General Assembly’s finding that “a competitive wholesale and retail market must benefit all Illinois citizens.”<sup>9</sup>

The restructuring that has taken place in the electric marketplace has placed an increased reliance on competitive wholesale markets to discipline prices. As a result, the effectiveness of the Commission’s efforts to assess the ability of sellers to exercise market power in wholesale markets, and mitigate it when it is present, has become increasingly critical to the development of competitive markets. Applicants that receive wholesale market-based rate authority from the Commission and yet are still able to exercise market power, make it difficult or impossible for states such as Illinois to develop sustainable competitive retail markets.

## **II. THE ICC’S RECOMMENDATION**

The ICC recommends that the Commission: 1) not approve CIGI’s Application for market-based rates until a proper Supply Margin Assessment (“SMA”) test is filed by CIGI and it receives Commission approval; 2) direct CIGI to use Simultaneous Import Capability (“SIC”) to represent the transmission import capability into the CILCO control area in its SMA test; and 3) not approve CIGI’s request for market-based rates until it can be ensured that the business

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<sup>8</sup> *Id.*, at §5/16-101A(d).

<sup>9</sup> *Id.*

structure proposed by CILCO and CIGI will not result in transmission customers losing genuine cost-based options for procuring ancillary services in the CILCO control area.

### III. DISCUSSION

#### **A. CIGI's Application is incomplete due to the lack of a Supply Margin Assessment test.**

In *Louisville Gas and Electric Company*, the Commission outlined the criteria that applicants seeking authority for sales of energy and capacity at market-based rates must meet. Specifically, the Commission determined that an applicant must demonstrate that it lacks market power (or has adequately mitigated its market power) by showing that neither it, nor any of its affiliates: (1) is a dominant firm in the sale of generation in the relevant market; (2) owns or controls transmission facilities through which the buyer could reach alternative sellers (or, if the seller or any of its affiliates does own such facilities, it has adequately mitigated its ability to block the buyer from reaching other sellers); and (3) can erect or control any other barrier to market entry.<sup>10</sup> Additionally, before allowing non-traditional pricing, the Commission has required a showing that there exists no affiliate abuse or reciprocal dealing.<sup>11</sup>

CIGI states that the Commission should approve its request for market-based rate authority because CIGI will not have generation or transmission market power, CIGI does not control potential barriers to entry, and there are adequate safeguards in place to prevent affiliate abuse.<sup>12</sup> Further, CIGI maintains that an SMA test is not necessary to grant CIGI's market-based rate request for the following three reasons: 1) the Commission has already granted market-based rate authority for CILCO and CIGI intends to assume ownership and control of substantially all of CILCO's generation assets; 2) CILCO and CIGI are part of the Midwest ISO

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<sup>10</sup> See *Louisville Gas and Electric Company*, 62 FERC ¶61,016 (January, 1993)

<sup>11</sup> *Id.*

<sup>12</sup> Filing

which has a market monitoring and mitigation plan pending at the Commission; and 3) CIGI's generation will be under long-term contract with CILCO (until 2004).<sup>13</sup> As explained in the next three sections, the ICC finds none of these reasons persuasive.

**1. CIGI's reliance on CILCO's previous market power study is misplaced.**

In its Application, CIGI contends that an SMA test is not necessary because the Commission has already determined that CILCO met the Commission's generation dominance market power standard and that, because CIGI intends to assume control of all of CILCO's generation capacity, the market analysis for CILCO is equally applicable to CIGI.<sup>14</sup> However, the Commission's initial approval of CILCO's request for market-based rate authority, and the subsequent June 4, 2001 triennial update filing, were based on the results of a hub-and-spoke test, not the more sophisticated SMA test.<sup>15</sup>

The ICC has argued in previous dockets, including CILCO's June 4, 2001 triennial market power update, that the hub-and-spoke methodology is flawed as a market power-screening device.<sup>16</sup> In particular, the test fails to assess accurately the ability of a power seller to exercise market power because it does not provide accurate definitions of geographic markets or accurate specifications of alternative available generation suppliers. The Commission acknowledged the shortcomings of the hub-and-spoke test in its *AEP Power Marketing* Order.<sup>17</sup> In *AEP*, the Commission concluded that while the hub-and-spoke analysis worked reasonably well when utilities were vertically integrated and retail loads were only partially exposed to the market, significant structural changes and corporate realignments have taken place in the electric

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<sup>13</sup> Filing, at 4

<sup>14</sup> Filing, at 4

<sup>15</sup> See *Central Illinois Light Company*, 83 FERC ¶ 61,252 (1998) and Docket No. ER98-2440, respectively. The Commission has yet to issue an order regarding CILCO's June 24, 2001 filing which was protested by the ICC.

<sup>16</sup> ICC Comments in Docket No. ER98-2440, at 6

<sup>17</sup> *AEP Power Marketing, et al.* 97 FERC ¶ 61,219 at 61,969 (November, 2001)

industry so that the hub-and-spoke analysis was no longer an effective mechanism to protect customers against generation market power.<sup>18</sup> Accordingly, the Commission replaced the hub-and-spoke test with the SMA test to be used with all new market-based rate filings.<sup>19</sup>

CIGI has based its request for market-based rate authority on an outdated test that the Commission has determined to be ineffective in protecting customers against generation market power. Accordingly, CIGI's reliance on the outdated test is misplaced. CIGI should be directed to perform the SMA analysis.

**2. CILCO's participation in the Midwest ISO does not provide sufficient grounds to exempt CIGI from performing an SMA test.**

In *AEP Power Marketing*, the Commission outlined the criteria regarding sales that are exempt from the SMA test. Specifically, the Commission established that:

All sales into an ISO or RTO with Commission-approved market monitoring and mitigation will be exempt from the SMA and, instead, will be governed by the specific thresholds and mitigation provisions approved for the particular markets.<sup>20</sup> (Emphasis added).

CIGI's filing states that the SMA test should not be applied to CIGI because "CILCO and CIGI are part of the Midwest ISO, which has both a market monitoring and a mitigation plan pending at the Commission."<sup>21</sup> However, CIGI does not specifically identify the Midwest ISO "mitigation plan" that is pending before the Commission. On March 18, 2002 the Commission issued an Order in *Cinergy Services, Inc.*, wherein the Commission addressed a request for market-based rates by Cinergy and its affiliates.<sup>22</sup> In the order, the Commission specifically

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<sup>18</sup> *Ibid*

<sup>19</sup> *Id.* at 61,969

<sup>20</sup> *Id.* at 61,970

<sup>21</sup> Transmittal Letter, at 4

<sup>22</sup> *Cinergy Services, Inc., Cinergy Corporation, The Cincinnati Gas & Electric Company, Cinergy Power Investments and PSI Energy, Inc.*, 98 FERC ¶61,306, (Mar. 18, 2002)



stated, "the Midwest ISO does not currently have Commission-approved market monitoring and mitigation of the type needed to exempt sellers from the SMA."<sup>23</sup>

The Commission's position in *Cinergy* is consistent with the ICC's position that the Midwest ISO market monitoring plan approved by the Commission does not have market power mitigation provisions, and accordingly, is inadequate to support requests such as CIGI's for exemption from application of the SMA test.<sup>24</sup> The Midwest ISO has not significantly modified its market-monitoring plan, either in the two months since the Commission issued its *Cinergy* decision or in the four months since the ICC stated its position on the Midwest ISO's market power mitigation authority.

Accordingly, given the Midwest ISO's lack of market power mitigation authority, participation in the Midwest ISO by CIGI or CILCO is not sufficient grounds for exempting CIGI from the SMA test requirement.

### **3. CIGI's power supply contracts with CILCO do not provide sufficient grounds to exempt CIGI from the SMA test**

CIGI's Application states that it should be exempt from the SMA test because CIGI's generation assets will be under a long-term Power Supply Agreement ("PSA") with its affiliate CILCO, until December 31, 2004.<sup>25</sup> However, in its *AEP* order, the Commission explains that the SMA test applies to generation that is either owned or controlled through contract by the Applicant or its affiliate. The Commission explained specifically that:

In applying the SMA, we will first consider the control area market where the applicant is located. Next we will consider the markets outside the applicant's control area market. An applicant will pass the screen if it or its affiliates own or control through contract an amount of generation located in a control area which is less than the supply margin (generation

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<sup>23</sup> *Id.*, at 62,308

<sup>24</sup> See Request for Rehearing of the Illinois Commerce Commission in Dkt. RT01-87-000 et al at 21-22. (January 18, 2002).

<sup>25</sup> Filing, at 3

in excess of load) in the control area. The margin will include the amount of generation that can be imported into the control area limited by the total transfer capability (TTC) of the transmission system (i.e., the lesser of uncommitted capacity or TTC). Sellers and their affiliates would continue to be allowed to sell into any control area where they pass the screen.<sup>26</sup>

While CILCO may retain control of the power under a PSA, this circumstance is irrelevant to the SMA test because CIGI and CILCO are affiliates. Accordingly, the Commission should direct CIGI to file a SMA in support of its request for market-based rate authority.

For the aforementioned reasons, CIGI's argument that it should be exempted from application of the SMA test must be rejected. Accordingly, the ICC requests that the Commission not approve CIGI's Application for market-based rate authority until CIGI files a proper SMA test and the Commission approves it.

**B. Simultaneous Import Capability is the proper measure of import capability for purposes of the SMA test.**

In addition to requiring CIGI to provide an SMA test, the ICC urges the Commission to direct CIGI to use a measure of SIC as its measure of transmission system import capability for the CILCO control area. The ICC has argued in previous dockets that SIC is the proper measure of transmission system import capability to use in the Commission's SMA test because it more accurately represents the physical reality of an applicant's transmission system.<sup>27</sup> The ICC believes that summing the posted total transmission capabilities ("TTC") of each of the individual interconnections between CILCO's control area and contiguous control areas would fail to take into account the physical reality of the transmission system and possibly result in an

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<sup>26</sup> *AEP*, at 61,970

<sup>27</sup> See ICC Comments in Docket Nos. ER02-506-002 (Bluegrass Generation, LLC) and ER99-852-000 (Edison Mission Energy)

overly optimistic estimation of the ability of generators outside the CILCO control area to compete with CIGI-controlled generation to serve load inside the CILCO control area.

More importantly, the use of an SIC measure to represent CILCO's transmission import capability is consistent with the Commission's stated intent in adopting the SMA screen. The Commission invited commentors to present arguments on a "case-by-case" basis that another factor, other than the sum of the TTC's, limiting import capability is appropriate, if warranted by the facts.<sup>28</sup> Given the amount of generation currently controlled by CILCO, the transmission constraints leading into the CILCO control area, and the need to evaluate the real impacts of these constraints at times of peak load, the use of simultaneous import capability in CIGI's SMA screen for the CILCO market is warranted.

**1. Even using the less rigorous TTC approach, transmission capability into the CILCO control area is extremely limited**

Although the ICC has not developed an estimation of CILCO's SIC, its examination of data concerning TTC into the CILCO control area reveals the extremely limited amount of transmission import capability into the CILCO control area. For example, MAIN's Firm Peak Study for Summer of 2002 indicates that the TTC for first-tier interconnections with the CILCO control area are as follows: Ameren +40 MW; Commonwealth Edison +15.79 MW; City, Water, Light and Power -17.84 MW and Illinois Power -35.22 MW.<sup>29</sup> Summing these TTC figures results in a total import capability of only 2.73 MW. In addition, the 2001 peak load for the CILCO control area was 1,287 MW.<sup>30</sup> Further, the total installed capacity for CILCO generators was 1,304

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<sup>28</sup> See Footnote 12, *AEP Power Marketing*, at 7.

<sup>29</sup> MAIN's Firm Peak Study for Summer of 2002, Posted on MAIN's OASIS Page on May 9, 2002

<sup>30</sup> FERC Form No. 1, at 401b (2001)

MW with an additional 150 MW controlled through contract.<sup>31</sup> In total, the generation resources available in the CILCO control area during peak periods was 1,460 MW. Of this total generation capability within the CILCO control area, CILCO or CIGI own or control all but 6 MW.<sup>32</sup>

This rough analysis indicates a very high level of supply market dominance by CIGI and CILCO within the CILCO control area market. At a minimum, these circumstances in the CILCO control area merit a more elaborate market power analysis than that put forward by CIGI. CIGI's Application for market-based rate authority should not be approved until that more elaborate analysis is completed and approved by the Commission.

**C. The Commission must ensure that transmission customers in the CILCO control area retain genuine cost-based options for obtaining ancillary services**

Section 2 of CIGI's Market-Based Rate Tariff pertains to the sale of ancillary services and appears to utilize the conditions outlined in the Commission's *Avista Corporation* order.<sup>33</sup> However, the Commission's *Avista* exemptions were based on the premise that ancillary service customers would be protected in part by the availability of the same ancillary services at cost-based rates from the transmission provider.<sup>34</sup> Accordingly, the Commission stated that the *Avista* exemption would not apply to sales of ancillary services by a third-party supplier to a RTO, where the RTO has no ability to self-supply ancillary services but instead depends on third

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<sup>31</sup> FERC Form No. 1, at 402 (2001) and FERC Form 714 (2000), respectively

<sup>32</sup> FERC Form 714, at 2 (2000)

<sup>33</sup> *Avista Corporation*, 87 FERC ¶61,223 (1999) In *Avista Corporation*, the Commission established an exception to the market-power study requirement for Applicants that are unable to provide a market-power analysis supporting their request for ancillary services market-based rate authority. The Commission stated that while it wished to foster entry into ancillary services markets and capture the benefits of price reduction, it was necessary to guard against potential anticompetitive behavior by third-party suppliers who may have market power. (At 61,883) Accordingly, the Commission concluded that third party ancillary service sellers unable to perform a market power study should be allowed to sell ancillary services at flexible rates, conditioned on the requirement that the Applicant establish an Internet-based OASIS-like site for providing information about and transacting ancillary services.

<sup>34</sup> *Id.* at 61,883

parties.<sup>35</sup> CIGI's Market-Based Rate Tariff reflects this condition. However, such a provision has the potential to create difficulty for the acquisition of ancillary services for transmission customers, CILCO and the MISO.

For example, Section 3 of the Midwest ISO OATT obligates CILCO as a transmission owner and control area operator to stand ready to provide ancillary services to transmission customers in the CILCO control area. Specifically,

The Transmission Customer may elect to (i) have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the appropriate Control Area operator, or (iii) secure the Ancillary Services (discussed in Schedules 3, 4, 5 and 6) from a third party or by self-supply when technically feasible. (Underlining added)

In addition to the foregoing, Section 3 of the Midwest ISO OATT also states,

Each Transmission Owner (and User, where applicable), with the ability to provide any or all of these ancillary services shall offer to provide such services (with respect to loads within its control area) under cost-based schedules unless market-based rates have been accepted for filing at the Commission.

If CILCO's request to transfer its generation assets to CIGI under Docket No. EC02-66-000 is granted, CILCO will no longer own any generation and will likely be forced to turn to CIGI in order to fulfill its ancillary services obligations under Section 3 of the Midwest ISO OATT. CIGI's contractual obligation to CILCO will be limited to the provision of CILCO's full requirements of power and energy necessary to serve the needs of CILCO's retail customers during CILCO's phase-in of Illinois' Customer Choice Law, through December 31, 2004.<sup>36</sup> Given that CILCO does not have market-based rate authority for ancillary services, CILCO will be limited to offering ancillary services to transmission customers under cost-based schedules. Ultimately, these "costs" may well be the prices charged by CIGI for the provision of ancillary

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<sup>35</sup> *Ibid*

<sup>36</sup> Filing, at 5

services to CILCO. Furthermore, the arrangement between CIGI and CILCO could potentially conflict with the Commission's statement in *Ameren Energy Marketing*, where the Commission stated that the *Avista* policy does not apply for sales of ancillary services by a supplier to a traditional franchised public utility affiliated with the supplier.<sup>37</sup>

Furthermore, the Commission's *Avista* policy extended only to four of the ancillary services: Regulation Service, Energy Imbalance Service, Spinning Reserves and Supplemental Reserves. In *Ameren Energy Marketing*, the Commission denied AEM's request to provide location-specific ancillary services, such as Reactive Supply, at market-based rates without a market power analysis.<sup>38</sup> Given that: 1) CIGI's Market-Based Rate Tariff does not contain any provisions regarding the provision of Reactive Supply; 2) CILCO is proposing to transfer its generation assets to CIGI; and 3) the MISO is unable to self supply ancillary services, transmission customers appear to be left with no options for obtaining locational-specific services, such as reactive supply, and appear to be left with no genuine cost-based source of capacity for the remaining ancillary services. The Commission must not permit transmission customers to be put into that position.

#### **IV. Conclusion**

As argued, *supra*, the Commission should not approve CIGI's request for market-based rates until a proper SMA test is filed by CIGI and it receives Commission approval. Performance and submission to the Commission of a proper SMA analysis is critical to ensure that CIGI is unable to exercise generation market power in the CILCO control area. In summary, a SMA test is warranted due to the following facts: 1) CILCO's market-based rate authority was originally granted based on the results of the ineffective and out-dated hub-and-spoke test; 2)

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<sup>37</sup> *Ameren Energy Marketing Co.*, 95 FERC ¶ 61,448, at 62,625 (2001)

<sup>38</sup> *Id.* at 62,625

CILCO's membership in the MISO does not exempt CIGI from the SMA test, per the Commission's *Cinergy Services, Inc.* Order; and 3) CIGI's contracts with CILCO do not exempt it from the SMA test.

In addition, the Commission should direct CIGI to use SIC to represent the transmission import capability into the CILCO control area in its SMA test. No other import capability measure accurately reflects the physical reality of an interconnected network transmission system. Any other methodology results in an overly optimistic estimation of the ability of generators to compete with CIGI to serve load in the CILCO control area. Because transmission import capability into the CILCO control area market is extremely limited, and because CILCO and CIGI control the overwhelming amount of generating capability with the CILCO control area market, it is very important that an accurate analysis of market power be conducted for the CILCO control area market.

Finally, before CIGI's market-based rate request can be granted, the Commission must ensure that the business structure proposed by CILCO and CIGI will not result in transmission customers losing genuine cost-based options for procuring ancillary services in the CILCO control area. Such options are critically important for location specific ancillary services such as Reactive Supply.

May 29, 2002

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION

/s/

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John P. Kelliher  
Special Assistant Attorney General  
Illinois Commerce Commission  
160 N. LaSalle, Suite C-800  
Chicago, Illinois 60601

Voice: 312/793-2877

Fax: 312/793-1556

e-mail: *[jkellihe@icc.state.il.us](mailto:jkellihe@icc.state.il.us)*



**FERC SERVICE LIST NO. ER02-1688  
CENTRAL ILLINOIS LIGHT COMPANY  
MAY 29, 2002**

CRAIG GILSON  
CENTRAL ILLINOIS GENERATION, INC.  
17751 N CILCO RD  
CANTON , IL 61520-8761

MARK J MCGUIRE  
MCGUIREWOODS LLP  
1050 CONNECTICUT AVE NW STE 1200  
WASHINGTON, DC 20036-5317